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HON. FREDERICK P. CORBIT

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

In re:
GIGA WATT, INC.

CASE NO. 18-03197-FPC11

MOTION TO ENFORCE SETTLEMENT
AGREEMENT AND NOTICE THEREOF

Debtor in Possession

Giga Plex, LLC and MLDC1, LLC, (“Landlords”) by and through its counsel of record, moves this Court for an order to enforce the settlement agreement memorialized on September 23, 2020 via the Chapter 11 Trustee’s Order Approving ML and EDH Settlement and Granting Related Relief (ECF No. 724).

I. FACTS

1.1 From approximately November 2019 through August 3, 2020, the Chapter 11 Trustee, the Landlords, and ECO-Diversified Holdings, Inc (“EDH”). diligently worked on a settlement agreement among the respective parties.

1.2 On September 23, 2020, the Chapter 11 Trustee filed his Motion for an Order (i) Approving ML and EDH Settlement and Granting Related Relief and (ii) Shortening Time (“Motion”) (ECF No. 724).

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1 1.3 Attached as an exhibit to the Motion was the Settlement Agreement and
2 Release (“Agreement”) which stated the relevant facts of the matter, and the terms for the
3 Court’s approval. A copy of the Agreement is attached hereto as “Exhibit A” and
4 incorporated by reference as if set forth in full herein.

5 1.4 Paragraph 1(a) of the Agreement provides as follows: 1. Settlement
6 Payments. (a) Payment by the Trustee. The Trustee shall pay the Landlords the sum of One
7 Hundred Sixty-Nine Thousand One Hundred Twenty-Eight and 43/100 Dollars
8 (\$169,128.43).

9 1.5 Paragraph 1(c) of the Agreement provides: Timing of Payment. The
10 payments provided herein shall be paid by wire transfer not later than five (5) business days
11 after entry of an order in the Bankruptcy Case approving this Agreement (the “Approval
12 Order”).

13 1.6 Paragraph 11 of the Agreement provides: Subject to Court Approval. This
14 Agreement, and all the rights, obligations, releases, and waivers of each of the Parties
15 hereunder, are subject to the approval of the Bankruptcy Court. The Trustee will seek the
16 approval of the Bankruptcy Court within five (5) business days after receipt by the Trustee
17 of this Agreement executed by both the Landlords and Diversified.

18 1.7 Paragraph 20 of the Agreement provides: Choice of Forum; Exclusive
19 Jurisdiction. The Bankruptcy Court shall be the exclusive forum for litigation concerning
20 this Agreement. The Parties hereby irrevocably submit to the exclusive jurisdiction of the
21 Bankruptcy Court and waive the defense of inconvenient forum to the maintenance of any
22 action or proceeding in such venue.
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1 1.8 The final signature and date on the Agreement was August 28, 2020,
2 however, the Agreement was not filed until September 23, 2020.

3 1.9 On August 3, 2020, the United States Trustee filed Motion to Convert the
4 Chapter 11 Case to a Chapter 7 (ECF No. 659).

5 1.10 On September 14, 2020, the Chapter 11 Trustee filed its response to the
6 Motion to Convert (ECF No. 713). The response was favorable to the Motion to Convert.
7 The response apprised the Court that “[a] sale of the remaining equipment located at the
8 Moses Lake Facility has also been negotiated, memorialized in a written agreement, and I
9 am preparing to seek Court approval for that sale.” (ECF No. 713, pg. 2 at 11-13).

10 1.11 No further briefing was provided to this Court or creditors as to the Court’s
11 ability to grant the relief requested in light of the pending motion to convert.
12

13 1.12 On September 29, 2020, this Court entered the Order Converting Case to
14 Chapter 7.
15

16 1.13 On October 8, 2020, a hearing was held on the Motion to Approve
17 Compromise (ECF No. 724) and the Motion to Sell Free and Clear (ECF No. 720).

18 1.14 As indicated in the Court’s minutes (ECF No. 752), the Motion to Approve
19 Compromise was orally granted by the Court, and counsel for the Trustee was directed to
20 present an order.
21

22 1.15 After entry of the Court’s ruling, counsel for the Landlords requested
23 payment pursuant to the terms of the Agreement.

24 1.16 The response given was that the Chapter 7 Trustee could not comply with the
25 terms of the Agreement until all Chapter 7 administrative claims were known and fixed.
26

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1.17 It was then suggested that the matter should be brought to the Court at the next scheduled hearing.

1.18 As today's date, the Court's oral ruling stands but no formal presentment on the Motion has been accomplished.

1.19 No motion for additional findings by the Court has been brought under FRBP 7052 at this time.

1.20 The case was converted to a Chapter 7 when the Agreement was approved, and therefore there should be no cause for further delay.

1.21 The Trustee is in breach of the Agreement and Landlords seek to enforce the terms of the approved Agreement.

1.22 Landlords request further findings by this Court and request that the pending motion to enforce settlement agreement be granted, and further direct the Chapter 7 Trustee to make the disbursement to Landlords within seven (7) days of entry of order.

II. AUTHORITY

2.1 11 U.S.C. § 105 (a) provides a “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”

2.2 By today's date, all funds of the Chapter 11 estate should have been delivered to the Chapter 7 Trustee. There are funds to pay pursuant to the Agreement and the other

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1 party to the Agreement, EDH, has complied with the terms of the Agreement pursuant to
2 this Court's ruling. The issue before the Court is whether the payment contemplated in the
3 approved settlement agreement is subordinate to Chapter 7 administrative claims under 11
4 U.S.C. § 726(b) and when payment should be made. Landlord believes that since case was
5 converted to a Chapter 7 when the Agreement was approved, there should be no cause for
6 further delay.
7

8 2.3 Therefore, Landlords request that the Motion to Enforce Agreement be
9 granted, and this Court further direct the Chapter 7 Trustee to make the disbursement to
10 Landlord's pursuant to the Court's Order within seven (7) days of entry.
11

12 DATED: November 2, 2020
13

14 OVERCAST LAW OFFICES-NCW, PLLC
15 /s/ David A. Kazemba
16 David A. Kazemba, WSBA #48049
17 Attorneys for Creditors, Giga Plex, LLC and
18 MLDC1, LLC
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1 **PLEASE TAKE NOTICE** that Giga Plex, LLC and MLDC1, LLC (“Landlords”)
2 hereby gives notice of its request for an order on the MOTION TO ENFORCE
3 SETTLEMENT AGREEMENT AND NOTICE THEREOF.

4 **THE MOTION WILL BE SET FOR HEARING AS FOLLOWS:**

5 JUDGE: The Honorable Frederick P. Corbit

6 HEARING DATE: December 1, 2020 at 10:30 am

7 RESPONSE DATE: November 26, 2020

8 LOCATION: **Telephonic: 1-877-402-9753, Access #3001392**

9
10 Anyone wishing to object to this motion must respond on or before the date set by this
11 Court. Objections shall be served upon the Clerk of the Bankruptcy Court at PO Box 2164,
12 Spokane, WA 99210-2164 and upon counsel for Landlords at Overcast Law Offices-NCW,
13 PLLC, 23 S. Wenatchee Ave. Suite 320, Wenatchee, WA 98801.

14
15 **PLEASE TAKE NOTICE THAT THE COURT MAY ENTER THE ORDER**
16 **SOUGHT ON CREDITORS’ REQUEST AT THE SCHEDULED HEARING UNLESS**
17 **A PARTY IN INTEREST SERVES AND FILES AN OBJECTION BEFORE THE**
18 **RESPONSE DATE OF NOVEMBER 26, 2020.**

19
20 DATED: November 2, 2020.

21
22 OVERCAST LAW OFFICES-NCW, PLLC

23 /s/ David A. Kazemba
24 David A. Kazemba, WSBA #48049
25 Attorneys for Creditors, Giga Plex, LLC
26 and MLDC1, LLC

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